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Supreme Court, U.S.
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No. 00-765

In The

SUPREME COURT OF THE UNITED STATES

IN RE: HARRY W. VINSON
BRAD VINSON

Petitioners

vs.

DOROTHY COLOM; ET AL

Respondents

REPLY TO BRIEF IN OPPOSITION FOR WILLIAM (BILL) BENSON

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in propria personna

8 pp

Response to alleged perceived misstatements of fact or law in the petition that bear on what issues properly would be before the court if certiorari were granted.

Contrary to Respondent Benson and his counsel's assertions, the original docket sheet of the case in question does not reflect an order signed by Dorothy Colom on 18 November 1998, the reason it doesn't is because one does not exist, the record does reflect that Judge Dorothy Colom was appointed, because of recusal of judges in district, after the date of the perfected appeal 9 December 1998, therefore she was not appointed to hear this matter on 18 November 1998. This is an easy matter to resolve, have Respondent Benson's counsel produce the final order he says she signed on that date and the order appointing her by the Supreme Court of Mississippi. Facts are facts.

The truth as the record reflects is that Chancellor Timothy Erwin consolidated case nos. 96-0078 and 96-1110 and issued a final order 13 **October 1998**, the final order Petitioners appealed 9 December 1998. *(It should be noted that the last inspection of the mentioned docket sheet contained numerous "whiteout" changed entries, therefore Petitioners do not know what it now reflects, but Petitioners have maintained progressive copies)*

Contrary to Respondent Benson's counsel's assertion Fed.R.Civ.P. Rule 8 clearly sets forth averments require a response and are deemed admitted when not denied. The averments that required a response were not answered by

Respondent Benson. Fed.R.Civ.P. Rule 12(b)(6) is not proper unless under no facts or circumstances could relief be granted. "Alleged immunity" would not be present if the alleged judge was without jurisdiction. Since the above mentioned cases had been consolidated, a final order issued by Chancellor Timothy Erwin and an appeal perfected to an appellate court, before Judge Dorothy Colom was wrongfully and illegally, appointed in this matter, thus she was wholly without authority or jurisdiction. Benson was shown to be acting, without authority, as an alleged conservator, as such creating constitutional violations of Petitioners and having circumstances where relief could be granted preclude Fed.R.Civ.P. 12(b)(6) without discovery.

Respondent Benson further misled the court in that Title alone does not bestow immunity. The acts complained of, such as judicial immunity, must have jurisdiction to apply. Further Benson was not acting as a Court Clerk in this matter, he was allegedly acting as an appointed conservator by a facially invalid temporary order.

RESPONSE TO REASONS FOR DENYING THE WRIT

Respondent Benson, throughout this case, has been trying to paint a picture of frivolous, harassing lawsuits. Petitioners have identified very serious problems affecting the mistakes of the courts, so it is a natural response for Respondent to try to make the Petitioners look like the bad guy on the block, and to protect and cover up the wrongful and illegal acts of the court and clerks. It is well settled the *Rooker Feldman* doctrine does not apply to temporary orders. Respondent admits on Page one of his opposition brief, that this was a temporary order. Facts are facts.

RESPONSE TO THE DISTRICT COURT'S DECISION AND FIFTH CIRCUIT'S AFFIRMANCE THEREOF WITH APPLICABLE LAW.

Respondent Benson's contentions are totally without merit. Benson was illegally appointed by a facially invalid temporary order issued by a judge appointed by an appellate court upon the recusal of the district judges, after a final order had been issued and appealed in this matter. Even if Judge Colom had had jurisdiction to appoint Benson conservator, he would not have been acting as a court clerk, with quasi immunity, in this matter. No judicial immunity is attached to acting as conservator.

Respondent Benson admits the order in question was temporary, therefore *Rooker Feldman* does not apply. Although the constitutional violations complained of, accrued during the alleged state proceedings, they are not appealable under Mississippi Law, therefore giving Petitioners no post deprivation relief. Title 42 U.S.C. 1983 is a congressional remedy for constitutional violations and damages resulting thereof. Even if remedies were available, the damages arising from this case could not be fixed on appellate review.

RESPONSE TO THE DISTRICT COURT POSSESSES THE INHERENT AUTHORITY TO REASONABLY CONTROL ITS DOCKET BY LIMITING THE FILING OF FRIVOLOUS LAWSUITS.

Contrary to Respondent's position, this very court has held that the party paying his way has access to the courts. The cases cited throughout this case refer to those proceeding in forma pauperis, therefore off point in this case. In Re: Sindram, 498 U.S. 177.

Oddly, Respondent Benson does not deny he violated Petitioner's Constitutional Rights. He only pleads that he is immune. Therefore, it cannot be said that the case is frivolous, without merit or was brought to harass. This lawsuit is based in fact and law. What we have are public officials committing numerous constitutional violations willingly and knowingly and then claiming alleged immunity without benefit of discovery or correction on appeal. Each one covering for the other.

RESPONSE TO THE DISTRICT COURT FOLLOWED APPLICABLE RULES OF CIVIL PROCEDURE, AND LOCAL RULES, IN LIMITING DISCOVERY IN THIS CASE.

Respondent Benson's argument attempts to allow an official to commit acts, immediately claim immunity and not allow discovery to see if in fact or law there is immunity for his actions. It is well settled Title alone bestows no immunity. Further Benson had not shown any authority making a conservator a member of the judiciary, whom might seek immunity. Discovery was necessary to determine if any of the acts complained of would give claim to immunity.

Congress passed Title 28 U.S.C. §2072 which states rules shall not abridge, enlarge or modify any substantive right. Congress passed Fed.R.Civ.P. Rule 26 - 37 to allow discovery, **period**. It is superior to any local rule as the courts have held if a constitutional violation is claimed, the claimant has stated a cause of action. Therefore, the counsel for Respondent Benson submitted his opposition response without merit. Further this court should grant certiorari to reaffirm congressional and judicial mandates upon the federal courts.

CONCLUSION

Respondent Benson's opposition clearly shows the court the need to grant certiorari in this matter so as to protect the constitutional rights afforded all litigants and to right a wrong done to Petitioners.

Respectfully submitted
without prejudice,

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